

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on January 22, 2001 at 3:15 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. David Wanzienried (D)

Members Excused: Rep. Rod Bitney (R)
Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 199, 1/17/2001
Executive Action: HB 40; HB 114; HB 129; HB 159

EXECUTIVE ACTION ON HB 40

Motion: REP. STORY moved that HB 40 DO PASS.

Motion: REP. STORY moved that the AMENDMENT FOR HB 40 BE ADOPTED.

Discussion: REP. STORY handed out the amendment EXHIBIT(nah17a01) and explained that the purpose of it is to extend the Rural Water Trust Fund for an additional three years. Amendment 2 extends the diversion of the tax into the trust for an additional three years.

REP. YOUNKIN stated that this amendment will extend the sunset to 2016.

REP. EGGERS stated that he supports the amendments but he is not sure that he supports the bill. He asked REP. STORY if it is a good idea to sunset this. He stated that the whole state needs regional water system improvement and he sees that becoming a viable, active, vigorous subject over the next decade or so. He made the suggestion to lift the sunset completely.

REP. STORY stated that he is not certain the fund will ever be drawn on again in the size of the two projects that are out there. If it is another legislature could come back in succeeding years and extend the sunset out. The concern is that once you make this fund permanent then it may take a 3/4 vote of the legislature to change that.

Vote: Motion carried unanimously.

Motion/Vote: REP. DALE moved that HB 40 DO PASS AS AMENDED.

Motion carried unanimously.

EXECUTIVE ACTION ON HB 129

{Tape : 1; Side : A; Approx. Time Counter : 10.7}

Motion: REP. BALES moved that HB 129 DO PASS.

Motion: REP. BALES moved that AMENDMENT FOR HB 126 BE ADOPTED.

Discussion: REP. BALES handed out the amendment EXHIBIT(nah17a02). He stated that the amendment addresses two concerns: 1) that the old well will be plugged, in a proper way, and taken care of; 2) that a water right will not be given to an individual that had abandoned the well.

REP. LAIBLE asked if there was some discussion on time limits.

REP. BALES stated that as far as abandoning a water right, the sited section, 85-2-404, specifies the time limits.

Vote: Motion carried unanimously.

Motion/Vote: **REP. BALES** moved that **HB 129 DO PASS AS AMENDED**.
Motion carried unanimously.

HEARING ON HB 199

Sponsor: **REP. DAVE GALLIK, HD 52, Helena**

Proponents: Budd Williams, Helena
Tom Daubert, Montana Solid Waste Contractors
Association

Opponents: Will Selser, Lewis & Clark County Public Works
Department, Lewis & Clark County Scratch Gravel Solid
Waste District, Solid Waste Association of Montana
Jane Jelinski, Montana Association of Counties
Ferris Toavs, Roosevelt County Commissioner

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 15.2}

REP. DAVE GALLIK, HD 52, Helena, stated that this bill adds a definition to "family residential unit" in 7-13-202 and 7-13-4502, MCA. He stated that the purpose of this bill is to clarify which of those "family residential units" are going to be required to pay solid waste fees within the county. This bill was brought about because of a request of one of his constituents. The problem is that he has to pay twice. He lives in Helena and has a small cabin, both in Lewis & Clark County. All of the garbage from his cabin is transported back to his home and disposed of there. He requested that the legislature look at the definition of a "family residential unit" to exclude those that do not have a water and sewer. **REP. GALLIK** also handed out an amendment to the bill **EXHIBIT (nah17a03)**.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 17}

Budd Williams submitted written testimony **EXHIBIT (nah17a04)**.

Tom Daubert, Montana Solid Waste Contractors Association, stated that his company supports this bill because it helps keep a fair competition between the public and private sector regarding solid waste. He urged the committee's support.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 24.7}

Will Selser, Lewis & Clark County Public Works Department, Lewis & Clark County Scratch Gravel Solid Waste District, Solid Waste Association of Montana, submitted written testimony **EXHIBIT** (nah17a05).

Ferris Toavs, Roosevelt County Commissioner, stated that he opposes HB 199 for the simple reason that it should include rustic cabins and different homes because they also produce waste.

Jane Jelinski, Montana Association of Counties, stated that there is a local opportunity for flexibility to address concerns. Inserting this new language would also exclude residential units that don't have indoor plumbing from the assessment of a local water quality district. A rustic cabin with an outhouse would have more effect on water quality than a residence that has indoor plumbing. It would be inappropriate to exclude these.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 32.5}

REP. CLANCY asked **Mr. Selser** why a person would be charged for Scratch Gravel and Marysville district services. **Mr. Selser** stated that Scratch Gravel District encompasses the entire south end of Lewis & Clark County. Since 1989 there has been a container site in Marysville. A number of years ago the County Attorney's Office stated that it is not legal for the county to charge all of the people in the district for that specific container site because it is a remote site. The residents that live in the area that use that site decided to keep the site and pay for it. Followup - so are the residents in Marysville paying for both the Scratch Gravel and the Marysville landfill services? **Mr. Selser** stated yes because the Marysville container site uses Scratch Gravel District trucks, infrastructure and landfill.

REP. DALE asked **REP. GALLIK** if the reference to any property with a value of \$5000 or less means any property or any property with a livable structure. **REP. GALLIK** redirected the question to **Mr. Selser** who stated that until 2 years ago the board had a policy

of assessing any property with structures on it worth more than \$5000. There was an issue that came from the County Attorney's Office who said that was not an equitable assessment process. The board went back and spent two years reassessing that policy and it was changed in October of 1999. Since then the assessment for the district has been based on the Montana Department of Revenue's field assessors indicating that they are dwellings with livable units.

REP. ERICKSON asked **REP. GALLIK** to show a connection between indoor sewer and water and solid waste. **REP. GALLIK** stated that the circumstances from which this bill came about were in a situation where the same owner of the dwellings generates the waste. **Mr. Williams** has a small cabin in which he brings his waste home and disposes of it. He also stated that the last section of the bill, the amendments to 7-13-4502 MCA, was added by the drafters because the definition of a "family residential unit" was defined there and they wanted to make it uniform. He did not have a problem with removing it. Followup - **Mr. Williams** takes his garbage home but this law applies to everyone, including the people who don't take their garbage home, is that fair? **REP. GALLIK** stated, in those circumstances, depending on what they do with their garbage, it may not be fair. Possibly it would be appropriate to make an amendment stating, if the individual who generates the garbage already pays one garbage fee within that particular then it would be appropriate to have only one fee.

REP. BROWN asked **REP. GALLIK** if he was saying that it would have to be within the same county because some people have rustic cabins in different counties and still bring their garbage home. **REP. GALLIK** stated that would be one circumstance and could be an amendment to the bill. The point of the bill is eliminate the requirement for somebody who is already paying a solid waste fee in the same county and bringing their waste back, to pay a double fee.

REP. BALES asked **Mr. Selser** if there is an opportunity, in this area, to either opt in or opt out of the service. **Mr. Selser** stated no, and that is statewide. He also stated that he does not know of any process for individuals to opt out within their boundary.

REP. BROWN asked **REP. GALLIK** if this means that the people in a district, who have no running water, should be able to opt out of a district ... would it mean that if they don't have running water and they have an outhouse they are opted out of this bill? **REP. GALLIK** stated the way that it is written at this point in time it would not.

REP. LAIBLE asked **REP. GALLIK** to explain how this works, is a garbage service fee included in the fee we are talking about?

REP. GALLIK answered that he doesn't know and deferred the question to **Mr. Williams** who stated that service charges have nothing to do with picking up waste. The service charges are strictly for the landfill facility. Followup to **REP. GALLIK** - Could you address the issue that the Attorney General, Marc Racicot, ruled on this already and that this was part of the services provided by the county, although, people didn't have to avail themselves of it. **REP. GALLIK** stated that he is aware of two Attorney General opinions. However, he hasn't read either of them. He deferred the question to **Mr. Williams** who said that one of the opinions stated that all property in a solid waste district provided value from the availability of a licensed facility regardless of the level of use. That opinion was related not to solid waste but to sewer and water facilities. Marc Racicot's opinion was relative to another matter but it had to do with solid waste management. In there it was specifically stated that the only means for charging service charges would be per "family residential unit" and how could that be mistaken for a cabin.

REP. ERICKSON asked **Larry Mitchell** is the code scattered with different definitions what "family residential units" are. Is this the only place in MCA where we get a definition for "family residential unit?" **Mr. Mitchell** stated that he doesn't know the answer to that. He guessed that this is probably the only place it appears.

REP. YOUNKIN asked **Ms. Jelinski** if there is a process for the county commissioners to hear if someone wanted to be left out of the solid waste district. **Ms. Jelinski** stated yes, different counties have different procedures of going about this.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 56.4}

REP. GALLIK stated that the concerns addressed need to be worked out, especially the ones regarding the water quality subsection. He also stated that "family residential unit" is in one other place and the drafter decided to define "family residential unit" uniformly with his ok. He stated that he believes that **Mr. Williams** has explained to the committee the reason why he requested the bill be drafted.

EXECUTIVE ACTION ON HB 114

{Tape : 1; Side : B; Approx. Time Counter : 0.3}

Motion: REP. STORY moved that HB 114 DO PASS.

Discussion: REP. STORY went over the bill. He stated that on page 8, 9 and 10, the language "the department shall make the forms available through its offices and the offices of the county Clerk and Recorder's," is all struck and the only part that should be struck is "and the offices of the county Clerk and Recorder's."

Motion: REP. MOOD moved that REP. STORY'S AMENDMENT FOR HB 114 BE ADOPTED.

Discussion: REP. STORY asked if this language would restrict the department from putting the forms anywhere else. REP. YOUNKIN deferred the question to Larry Mitchell. He stated that he does not believe the language is exclusionary. It's specific to what they must do but it does not restrict them from doing something additional.

REP. GUTSCHE asked why it is a big deal to take the forms out of the Clerk and Recorder's office? It could be a long way for someone to go to get one of these forms.

REP. HURDLE suggested that the committee add "or it could be provided electronically."

REP. STORY stated this does not restrict the department, it just requires them to put the forms in one place. The department can put the forms wherever they want or in any method as long as they are available at the DNRC office.

REP. BALES stated that it is good to take the Clerk and Recorder out. It is obsolete to keep the forms at that office as the DNRC handles everything regarding this issue.

REP. WANZENRIED asked REP. BALES how far he has to go to the DNRC offices versus the Clerk and Recorder's office. REP. BALES answered the Clerk and Recorder's office is about 55 miles away and the nearest DNRC office is about 120 miles.

Larry Mitchell stated that the first amendment on page 8, lines 3 and 4, should be used throughout the bill. It would read, "the department shall make the forms available through its offices." That way the department can use its discretion as to whether it is electronic, mailed out, provided at the county Clerk and Recorder's, etc.

REP. DALE stated, on occasion, not only do county Clerk and Recorder's not have a familiarity with the process, they don't

even know that the forms exist. A person could call DNRC and the forms could be mailed to them.

Motion/Vote: REP. YOUNKIN moved that a **SUBSTITUTE AMENDMENT** to substitute the language as **Mr. Mitchell** suggested **BE ADOPTED**. **Motion carried 16-4 with Eggers, Gutsche, Tramelli, and Wanzenried voting no.**

Motion: REP. STORY moved that **HB 114 DO PASS AS AMENDED**.

Discussion: REP. WANZENRIED asked to have the difference between developed spring and well explained to him.

REP. STORY stated, a spring is surface water that you have a use for, it's like a stream but it doesn't go anywhere. If you have a use for that than you can file a water right on it, if you can measure it. As soon as you develop it then the only water you can claim is the increase in the flow.

REP. BALES stated that what concerns him is regarding the spring. If they had left it without putting, "or is artificially withdrawn" at the end, then he would have thought more that it is a spring. When they use the words "artificially withdrawn" then that almost means that it has to be pumped to furnish water.

REP. LAIBLE stated that the question was asked, what is the difference between a well and a developed spring and it was answered, administratively they are the same.

REP. STORY read a definition stating, "the definition of a developed spring has been the subject of some controversy in the past, there are some old court cases and statutes that indicate the development of a spring require the flow of the spring to increase and if the water right to the ground water in which resulted from it. Such a development is limited to the increased flow. As a practical matter seldom does anyone know how much water a spring is producing before the development and therefore it is impossible to determine the amount of the increase." Once you go into a natural spring and make any increased flow out of it you have created a well.

REP. YOUNKIN stated, to make any appropriation of surface water, of any amount, you have to apply to the DNRC. If you are making an appropriation of ground water which is 35 gallons a minute or less then you do not need to apply to DNRC. That's basically the difference. She then asked **Bud Clinch** of the DNRC to add to that if he could. **Mr. Clinch** stated that this addition is in the

definition is a clarification because the term "developed spring" shows up in other portions of the water use act and without a definition there it is continually open to interpretation.

REP. HOLDEN asked if the definition of 35 gallons or less is ok.

REP. YOUNKIN stated that is already in statute.

REP. GUTSCHE stated that this doesn't add clarification regarding the difference between developed springs and wells.

REP. YOUNKIN stated that she is satisfied with the definition.

REP. CLANCY stated, since developed springs means any artificial openings it has to be punched into the ground. Whether it flows out naturally or comes out it still falls under the definition of a developed spring which isn't a lot different than a well.

REP. HURDLE stated that the difference between a well and a spring is quite obvious. In a spring the water just springs there and with a well you have to dig down after the water. A developed spring means someone has done something to it.

REP. YOUNKIN stated, exactly.

Vote: Motion that **HB 114 DO PASS AS AMENDED** carried 19-1 with **Wanzenried** voting no.

EXECUTIVE ACTION ON HB 159

{Tape : 1; Side : B; Approx. Time Counter : 26}

Motion: **REP. WANZENRIED** moved that **HB 159 DO PASS**.

Discussion: **REP. STORY** stated that he is not going to vote for this bill because, the way it is structured, the only people who can take advantage of the program are municipalities. Private industry can't compete with municipalities and this is giving them an unfair advantage.

REP. LASZLOFFY stated, if the legislature is going to make these low interest loans available he would rather see them made available to private businesses so he will also vote no.

REP. YOUNKIN asked **REP. LASZLOFFY** if he is saying only private businesses and not municipalities.

REP. LASZLOFFY stated that private enterprise cannot compete with government entities and he couldn't get a decent response when he

asked how the two could work in tandem. If the government developed something and a private entity could buy it that would be fine but, government spends so much money getting into operation, far more than private industry ever does, that it would not be cost effective to buy a government operation.

REP. BALES stated that he believes this was done as a special deal for the taxpayers of Gallatin County who already have a loan secured. Gallatin County was just trying to get a loan with a lower interest rate. He stated that he was not sure that the law should be changed to cater to having that happen.

REP. EGGERS stated that he shares the other gentlemen's concerns.

REP. ERICKSON stated that he is for this bill for a number of reasons. It seems that it may well be a special situation but it's a good special situation. This will save Gallatin County \$500,000. Look at West Yellowstone, this is an energy conservation bill as well as a composting bill. There will be fewer big truck loads than there were before. We need this kind of help. It produces a good product, provides energy conservation and it saves money. This is an easy bill to vote on, it's a yes.

REP. HARRIS stated that when **REP. ERICKSON** and **REP. VICK** are on the same point it makes it almost irresistible. This is a no brainier.

REP. STORY reminded the committee that the dump at West Yellowstone used to have a composting facility which shut down.

REP. MOOD questioned the notion that somehow we're going to save energy by composting the waste in West Yellowstone. In response to his question, "Are you going to have a market for the compost in West Yellowstone?" the answer was no. They are going to develop a market with other government entities and it won't save any energy at all. They will just haul compost rather than garbage. He stated that he does not see the point of this.

REP. YOUNKIN stated that when you are hauling compost you are hauling 1/4 of the amount that you haul in solid waste. If there is no other reason to vote for this bill it's to keep three semi trucks a week off of highway 191, which is the second most fatal highway in the state.

REP. LAIBLE stated they're going to build that compost facility whether they get this bill passed or not. They already have their funding in place. We are just giving them an advantage that private industry doesn't have. If the need was there for a

composting facility it would've already been done. He stated that he is going to stand in opposition of this bill.

REP. MOOD stated that the 1/4 number is 1/4 the volume, it has nothing to do with the weight.

REP. ERICKSON stated that all landfills eventually fill up and we are extending the life of that landfill. That is a positive thing for the environment and the community.

Vote: Motion that **HB 159 DO PASS failed 8-12 with Cyr, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried, and Younkin voting aye.**

Motion: **REP. STORY** moved that **HB 159 BE TABLED.**

REP. YOUNKIN stated that, without objection, we will just convert the vote on the bill to be a table motion. **HB 159 WAS TABLED, 12-8 with Cyr, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried and Younkin voting no.**

ADJOURNMENT

Adjournment: 5:00 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah17aad)